IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2836 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

NILESH @ MUNNO RASIKLAL PATEL

Appearance:

Mr. D.N.Patel, A.P.P. for petitioner-State.
MR A.J PATEL for respondent nos. 1 & 3.
MR. A.D. SHAH, for respondents nos.2 & 4.
MR NITIN M AMIN for respondents nos. 5, 6, 7.

CORAM : MR.JUSTICE S.M.SONI
Date of decision: 22/07/96

ORAL JUDGEMENT

The question that arises in this application is whether a discretion exercised by trial Court to grant

bail can be interfered with by this Court? Can it be interfered with only if there are possibilities of tampering with the witnesses or interfering with the administration of justice or liberty granted to the accused is abused in any manner to prejudice the cause of justice?

An offence came to be registered in Satellite Police Station being CR no.197/96 under Sections 302,323, 342, 114 of the Indian Penal Code and Sections 3(1) of the Scheduled Castes and the Scheduled Tribes(Prevention of Atrocities) Act,1989. Prior to filing of the chargesheet, respondents filed application for bail before the learned Sessions Judge, Ahmedabad Rural being Criminal Misc. Application no.572/96. Alongwith the respondents, two others are arrayed as accused who are absconding. The learned Additional Sessions Judge by judgment and order dated 26th June, 1996 ordered to release the respondents on bail imposing certain conditions.However, operation of that bail order is stayed on request of the State as it was proposed to approach the higher forum The State has filed this application for cancellation of that bail order.

In the course of hearing the matter was adjourned time and again. However, on the last adjourned date, i.e. on 12-7-1996 it was brought to the notice of this Court that the Investigating Agency has submitted chargesheet against the respondents nos.1 to 5 and two others are shown absconding in column no.2 of the chargesheet.Chargesheet is not submitted against respondents nos.6 and 7. This Court, therefore, on that day did not continue the stay of the operation of order of bail granted by the learned Additional Sessions Judge against respondents 6 and 7. This Court on 12th July,1996 had stayed the operation of the order of bail upto 17th July,1996. Thereafter, 17th July, 1996 being declared holiday by the Court it appears that due to inadvertence on the part of the learned A.P.P. Mr. Patel, stay was not got extended further. However, the learned Advocates for the respondents fairly stated before the Court that till date they have not furnished bail and the bail order is not executed. Thus, the respondents nos.1 to 5 are in judicial custody as on today.

Learned A.P.P. Mr.D.N. Patel mainly contended that the learned Additional Sessions Judge has exercised the discretion to grant bail arbitrarily and erred in granting bail despite strong prima facie case against the accused, particularly, under Section 302 of the Indian

Peal Code. Mr. Patel, further contended that it is not that only in case of abuse of liberty granted this Court can cancel the discretionary order of bail. Learned Additional Sessions Judge ought not to have exercised the discretion in such serious cases in favour of the accused contended Mr. Patel learned A.P.P. It is, therefore, contended that the order of bail should be cancelled.

In reply to this, learned Advocates for the respondents contended that the discretion by the learned Additional Sessions Judge has been rightly exercised after considering the statements of witnesses from the police papers. The learned Advocates emphasized that bare reading of the statements of witnesses before the police may at the most constitute an offence, not an offence of murder in any case. At the most there may be an offence to cause hurt as it transpires from the injuries noted in post mortem notes and/or offence to cause disappearance of evidence under Section 201 which is a bailable one. The learned Additional Sessions Judge after appreciating and considering the statements of witnesses when has rightly exercised the discretion , this Court should not interfere with the same. All these contentions are without admitting the allegations made by the Investigating Agency. It is further contended that if one looks to the post mortem notes there are only contused lacerated wounds, however, the cause of death is given by the Doctor who performed the postmortem as shock due to injuries. Keeping in mind the facts as they are on record, the discretion exercised by the learned Additional Sessions Judge does not call for interference by this Court.

It may be stated that chargesheet is submitted in this case and both the parties have referred the same in the course of arguments.

It appears from the record that the incident took place as under:

That there were complaints of theft of sanitary and hardware articles and the accused nos.1 and 2 were receiving complaints for the same. On the day of the incident, accused no.2 saw deceased near a Pan Galea with their bicycle and tiffin. Accused no.2 suspected them and chased them. Thereafter some employees of the site where accused nos. and 2 were serving were either called or came and took the deceased in their common plot. It is in evidence that the respondents and two others(absconding) beat them for long period. As a result of this beating, they fell almost dead.Then car Tata Estate

came on the site and these two almost dead were removed from the site under the pretext of removing them to their houses, but they were left unattended somewhere in the outskirt of the City of Ahmedabad and Sarkhej Police Station was informed by some person on the next day in the afternoon that two dead bodies are lying there. It is the case of the complainant that as his son and other did not return home, he enquired for them near the site ,as he was informed by one Shankerlal Ratilal Panchal who is eye witness in this case that his son and Shailesh-son of his neighbour were beaten by Watchman and employees of the contractor of Saket bungalows. When he went there in the evening in the company of his brother-in-law and others, neither the Chowkidar nor any men of the contractor was found there. However, cycle and tiffin of his son and neighbour's son were found lying near the Pan Galla. He, then, lodged a complaint on the next day at about 1335 hrs. and complained that his son and the son of the neighbour are missing. Keeping in mind this fact and the evidence on record as referred earlier, it is to be considered whether is it such exercise of discretion by the Court to grant bail which calls to be interfered with.

The general principles that the Court has to bear-in-mind at the time of considering an application for bail are (i) the nature of accusation (ii) the nature of evidence in support of the accusation (iii) severity of punishments which conviction should entail and (iv) the character, behaviour, means and standing of the accused. It is stated at the bar that the accused nose and 2 are diploma holders in Civil Engineering, they were serving as Site Supervisor at the relevant time and coming from a middle class family. They were simply employees at the relevant time.

It may be relevant to refer to prosecution evidence to appreciate the contentions of the parties and to decide whether order of bail need be interfered with. Learned A.P.P. Mr. Patel contended that there are as many as three eye witnesses to the incident and there is incriminating evidence on record to establish the culpability of the accused. Witness Shankerbhai Ratilal Panchal has deposed to the effect that while he had gone to the Society to collect his dues from a member he saw seven to eight persons assaulting the deceased Kalpesh and Shailesh in common plot near swimming pool of the society and the respondents nos.1,2,4 and 5 were from amongst the said assaulters. This statement is further corroborated by evidence of Bhavesh Rajnikant Patel who has also stated to the effect that in the afternoon of

10th April, he had seen accused no.1-Chowkidar of that Society and others beating two boys. In statement of Meenaben Rajendrakumar Patel it comes out that she saw a group of persons in the common plot near swimming pool and she could identify accused no.2 from amongst that group. Then, there is an evidence of incriminating articles, namely, handle of spade, piece of bamboo stick and piece of rexin belt which were blood stained with human blood except the piece of rexin belt as per the report of the Forensic Science Laboratory. Mr. Patel further stated that dead bodies are found on next day lying in the outskirt of the city. Someone gave information to the Sarkhej Police Station at about 1800 hrs on the next day that two dead bodies are lying in outskirt. Sarkhej Police Station in turn informed the Satellite Police Station and the Investigating Agency came to know about the same. Mr. Patel further stated that it revealed during investigation that boys were removed in a vehicle Tata Estate and a vehicle Tata Estate is seized, the decky of which, contained human blood stains. Respondent no.3 had driven the said vehicle at that time.

The question before the Court is, can it be said in the facts and circumstances of the present case, that exercise of discretion by ignoring not only the gravity of offence but also ignoring the reasonable ground to believe that the accused are guilty of offence under Section 302 read with Section 114 and others is erroneous and conclusion reached is liable to be set aside. It appears from the order of the learned Judge that he had in mind what ultimate charge would be proved against the accused and in his opinion, it would be something like hurt and not Section 302 in any case. It appears that the learned Judge has proceeded on the principle of minimum liability as, according to him, there is no specific evidence as to who caused and by what and which injury and injuries which are noted in the postmortem notes are not sufficient to cause death in the ordinary course of nature. It appears that the learned Additional Sessions Judge has looked upon incident in two parts incident of assault in the common plot of the society and other, find of dead bodies from a remote place in the outskirt of the City of Ahmedabad. These two incidents should be read together as , in my opinion, there is a nexus between the two which I will refer later. There appears , at this stage, from the prosecution evidence an offence punishable under Section 302. The learned Judge has preempted the evidence at this stage and applying the principle of minimum liability has come to the conclusion that there is no offence of murder in the instant case.

This, in my opinion, is a grave mistake committed by the learned Judge. The learned Judge has discretion to grant bail but is to be exercised judiciously. Judicial exercise of discretion means conclusion arrived at is according to the rules of reason and justice and rules out any arbitrariness, in the nature of private opinion or once humor or vague and fanciful, in appreciation of evidence on record. Thus, the learned Judge when has borne in mind the principle of minimum liability and appreciated two sets of facts independently instead of conjoint one, has committed an error. Bail granted on such erroneous conclusion of facts and law , in my opinion, is improper and is arbitrary exercise of power conferred on him under Section 439 of the Code.

It is not that power to cancel bail can be exercised only if there is tampering with witnesses, likelihood of non availability of accused for trial, probabilities and possibilities of hindrances being created in trial, conditions imposed have been violated . It is not that once a discretion is exercised, the same cannot be interfered with even if the same is arbitrary and improperly exercised. If this Court can come to the conclusion from the material on record that the exercise of discretion is arbitrary one it can be interfered with by this Court though the order passed is discretionary one . This Court (Coram: M.B.Shah,J.) in the case of STATE OF GUJARAT VS. LALJI POPAT 7 ORS. 1988(2) G.L.R. 1073 has held in Paragraph 10 as under:

" It is true that normally this Court would be slow in interfering with the discretionary order granting bail to the accused. It is equally true that one of the paramount considerations for the Court at the time of cancelling bail would be whether the accused would be readily available for their trial and whether they are likely to abuse the discretion granted in their favour by tampering with the evidence. But at the same time the Court has also to consider the other relevant aspects in the matter before granting bail. The Court is required to exercise the discretion of granting bail judicially after following the well laid down principles. If the Sessions Court has ignored the said criteria of deciding bail application either intentionally or arbitrarily, then this Court has jurisdiction to set aside the said order. It is not the law that once the accused is released on bail on erroneous ground, till he tampers with the evidence or till he absconds, the High Court has no authority to interfere with the said order. In each case the Court is required to consider the reasonable apprehension of the prosecuting agency depending upon the

facts of each case. The Sessions Court is subordinate to the High Court and it is always open to the State Government to point out to the High Court that the order passed by the Sessions Court is arbitrary or illegal one or it suffers from any serious infirmity and the High Court would have jurisdiction either under Section 439(2) or Section 482 to quash and set aside the order."

Thus, in the said LALJI POPAT'S case, this Court after considering and referring to certain conditions has in the facts and circumstances of the case, cancelled the bail.

Mr. A.J. Patel, learned Counsel appearing for the respondents nos.1 and 3 has relied on the judgment of the Supreme Court in the case of SARMAN AND OTHERS VS. STATE OF MADHYA PRADESH, AIR 1993 Supreme Court 400. This he has relied on to justify the grant of bail contending that on any reading of the evidence of the prosecution, the case would not fall under Section 302 of the Indian Penal Code and at the most liability may arise for some minor offence. He has relied on the following observations:

" The prosecution case in general is that all of them were found with lathies. Nobody has stated that which of them caused the injury no.15 which unfortunately resulted in the death of the deceased. If any one of the appellants had exceeded the common object and acted on his own, it would be his individual act. In this case unfortunately no witness has come forward as to which of the accused has caused which injury. In these circumstances, we find it difficult to award punishment under Section 302/149 IPC."

He has also relied on a judgment in the case of ASLAM BABALAL DESAI VS. STATE OF MAHARASHTRA, AIR 1993 SC 1 and the relevant observations are at paras 11 and 40. It be noted that the case was with respect to cancellation of bail granted not on merits but was granted on default as chargesheet was not filed within time stipulated under the Code. Mr. Patel also relied on the judgment in the case of BHAGIRATHSINH JUDEJA VS. STATE OF GUJARAT, AIR 1984 SC 372 wherein the relevant observations are at Para 6 which reads as under:

" In our opinion, the learned Judge appears to have misdirected himself while examing the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned

Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be granted bail but we fail to appreciate how that circumstances should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court."

In the case of GUDIKANTI NARASIMHULU VS. PUBLIC PROSECUTOR, (1978) 1 SCC 240, Justice Krishna Iyer, as he then was, has observed in Paragraph 12 as under:

" All deprivation of liberty is validated by social defence and individual correction along an anti-criminal direction. Public Justice is central to the whole scheme of bail law. Fleeing justice must be forbidden but punitive harshness should be minimised. No seeker of justice shall play confidence on the court or community."

Keeping this observation in mind, it will be relevant to refer to the evidence on record. The father of one of the deceased on being informed that his son and another were beaten in the common plot of the society, when went to inquire for them, no one disclosed whereabouts of the boys and no one was present on the common plot on that evening and even next day This apart from the statements of the eye witnesses on the fact of beating, who are ordinary residents of the society have stated " they saw from a distance that two boys were beaten " They have not stated as to what happened then. How can it be believed that they were not knowing as to what happened to those boys then, when one of the

witnesses has his bungalow just abutting on the common plot? Ignorance pleaded by the witness before police and father of one of the deceased not getting any information about the deceased from society, in my opinion, calls on the prosecution to be more vigilant. It will be relevant to state that despite this on search in the office room of the society blood stains are found from tiles fixed on the wall near the washbasin. Handle of spade and bamboo stick stained with human blood are found from the office room. Piece of rexin belt is also found from the office room . Learned Counsel, Mr. Patel contended that assuming for the sake of arguments that respondents nos.1 and 2 and others had beaten the boys but it was with a view to teach them a lesson, and if situation had gone beyond their control as number of other persons had joined beating they cannot be held responsible for murder. Learned Advocate forgets that in the alleged fact situation Section 149 may be attracted. The fact suggested by the learned Counsel Mr. Patel appears very simple and sounds innocence of accused if not read with subsequent conduct. These very facts if read with subsequent conduct would echo rule of jungle. All the persons who beat the deceased-boys were either the employees of contractor and/ or working in the Society's scheme with the builder of the Society. After beating was over , all of them it is said left the scene of offence leaving there those boys almost dead except the Chowkidar and anotherwho are still absconding. None was found there in evening. Even chowkidar was not there. On the next day when the father of one of the deceased went to inquire about his son he did not find anyone to answer. If persons involved in the incident were really innocent and had acted without any malice only in the heat of passion and rage of anger, they had beaten the two boys, then atleast when the boys were beaten almost dead and became almost unconscious, they must have realised the situation and condition of the boys. Instead of throwing the boys at the outskirt of the city at the mercy of almighty, they ought to have atleast allowed them to remain there and there if not removed in the hospital. If they would have been allowed to remain there, some kind hearted may have removed them in hospital. On the contrary , they have been thrown away in the outskirt of the City. This would not have happened without passive consent if not active consent from respondents nos.1 and 2 or their employer whose vehicle is used. Blood stains are found from office room. This suggests either accused were stained with blood or said boys were taken to office room. Why were they taken to office room? It is in evidence that the office room was in possession of accused no.1. As per

the Investigating Agency, office room was opened with the key produced by accused no.1. Said injured were left unattended in the outskirt of the city, can it be believed that it was without the knowledge of the respondents, in particular, respondents nose and 2. Such act is a barbarian one.

The learned Advocate , relying on the judgment in SARMAN'S case(Supra) as also JAKSHI BARWAD'S case(Supra) , has argued to bring in the principle of minimum liability to reduce the gravity of the offence. Such defence may be considered, but not at this stage. In criminal trial defence comes after prosecution case is over. Question of principle of minimum liability would arise only after necessary evidence comes on record at the time of arguments on completion of trial, when the stage comes to decide liability and ,if yes, what. Bhagirathsinh's case was a case before the Supreme Court for bail on cancellation of bail by the High Court. There the Court has said that even if a prima facie case is established the approach of the Court in the matter of bail be not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence. The Supreme Court has further observed:

" We would have certainly overlooked this aspect of the matter if the approach of the learned Judge was otherwise one which would commend to us."

Thus, it is clear that if the approach of the learned Judge was otherwise one to command the higher forum, then availability and non tampering becomes secondary one.

Thus, it is not an absolute rule that the bail is a must if the presence of the accused could be made readily available for trial and is not likely to abuse the liberty granted to him. Case of Bhagirathsing cannot be read to convey that despite strong prima facie case the accused should be enlarged on bail if he is not likely to abuse his liberty. Question whether accused is likely to abuse his liberty would be again required to be considered in facts and circumstances of each case if there is strong prima face case . Question of availability of accused for trial and tampering with witnesses is to be considered in that context. Ordinarily it is difficult to say whether the accused

will abscond or accused will tamper with witness. Strong prima facie case suggests greater chances of conviction of offence charged and punishment may be imposed. An accused who is well placed and having roots in society had many more places to hide without any difficulty, beyond reach of police. Thus, he may delay the trial unreasonably and may present when memory of witnesses fades away or are won over. Such accused have many more sources to tamper with witnesses. Thus, in absence of any positive evidence, it cannot be said that accused or his relation well placed in society may not tamper the witnesses.

Notoriety of builders is known to our society. Accused in the present case are either employees of the builder or are engaged by them. To what extent builder may help the accused can be inferred from act ofproviding Tata Estate for removal of either dead or deadly injured and throw them in the outskirt at the mercy of Almighty.

There are other circumstances also which are required to be taken into consideration. It is equally true that seriousness of the offence by itself is not a circumstance to refuse bail and if the bail is granted to cancel the same, as held by G.T.Nanavati,J. ,(as he then was), in the case of PARSOTTAM MANILAL PATEL VS. DWARKABHAI MOHANBHAI PATEL AND ORS. 1994(1) G.L.H. (U.J.)7. It will be relevant to refer to the post mortem note wherein in column no.17 of both the notes there are as many as 8 to 9 external injuries on body. However, on internal examination of one who is aged about 20 years, the lungs appear to have been injured. In column no.20 against caption " right lung" , it is stated "Bloodstained froth is coming out from the mouth." Normally, except internal injury there would be no possibility or probability of bloodstained froth. The postmortem was carried out as dead bodies of unknown persons. Thus, it is clear that though the external injuries on both the persons appear to be contused lacerated wounds it appears to have damaged the internal organs of the body and they could not be examined as the bodies had decomposed. This apart if a deadly injured person is thrown in wilderness with a view to hide his whereabouts and there the person dies for want of medical treatment, in my opinion, is a culpable homicide amounting to murder. Such case may fall in fourth clause of Section 300 of Indian Penal Code. Deadly injured remained practically fully exposed to weather under sky for about 24 to 25 hours.

The question, when there is a case of culpable

homicide amounting to murder, consideration of defence while considering whether there is prima facie case of murder is nothing but an arbitrary exercise of discretion and/or an improper exercise of jurisdiction. Discretion if exercised on prejudging the issue as to provision of law as to guilt of accused is nothing but an arbitrary or capricious exercise of discretion .Thus, the nature of accusation, behaviour of the accused and severity of punishment which on conviction would entail if was looked into by the learned Judge without considering the defence at this stage, the learned Judge ought to have refused the bail application .Thus, the Court has proceeded on wrong considerations to arrive at prima facie case. Thus, it can be said that the trial Court while granting bail exercised the discretion not only arbitrarily but erroneously on considering unwarranted facts. It is true that once the bail is granted even illegally or improperly the same may not be interfered unless it leads to miscarriage of justice. Here, in my opinion, when the trial Court has directed itself wrongly in considering defence while deciding prima facie case and appears to have reached wrongly to conclusion that the case is not one of culpable homicide amounting to murder. From the record it is clear that this is a case of culpable homicide amounting to murder, and therefore, discretion exercised by the learned Judge to grant bail has been wrongly and improperly exercised. It is not necessary that in every case there should be an allegation of tampering with the evidence or interference with the proceedings These factors are to be considered in the light of (a) nature and gravity of the circumstances in which the offence is committed; (b) the position and status of not only accused but by whom they are backed, for whose benefit they committed offence, with reference to victim and the witnesses; (c) history of the case. Here in this case respondents nos.1 and 2 are employed as Site Engineers by " builder". Immediately after the incident Tata Estate comes and removes said two boys and throws them in wilderness in the outskirt of the city. This suggests by whom the respondents are backed. The facts of the case suggest suggests that they are capable of going to any extent to ventilate their small grievance of theft of some sanitaryware. One can infer that but for powerful backing these persons would not have dared to do this , namely, throwing away deadly injured in wilderness. For a small theft if they can commit this offence, to what extent they would go if released on bail to frustrate the trial and or result thereof. It is not that the prosecuting agency should be asked to wait till the witnesses are tampered or the respondents go beyond reach for trial or in any way hamper with administration

of justice and thereafter to go for cancellation of bail. This would be nothing but to lock the stable after horses are already out.

No doubt it is said that bail is a rule and jail is exception, then why should there be provision of arrest. If the provision of arrest is there, then why should there be remand, be it to judicial custody. On completion of investigation , why legislation should not provide for bail as a matter of course? Why should one wait even till submission of chargesheet?

In the above view of the matter, this matter is squarely covered by the judgment of the Supreme Court in the case of STATE VS. CAPTAIN JAGJIT SINGH reported in (1962) 3 SCC 622. There the High Court had granted bail as two other persons had been granted bail; that there was no likelihood of respondent absconding he being well connected and that trial was likely to take considerable time. High Court did not consider that the offence was non bailable and the question before the Supreme Court was whether the High Court's order should be set aside if the case falls prima facie under Section 3 of the Official Secrets Act which is a non bailable one. The Supreme Court has then observed as under:

" It is however, unnecessary now in view of what has transpired since the High Court's order to decide that question. It appears that the respondent has been committed to the Court of Session along with the other two persons under s. 120-B of the Indian Penal Code and under ss. 3 and 5 of the Act read with s.120-B. Prima facie therefore a case has been found against the respondent under s.3 which is a non-bailable offence. It is in this background that we have now to consider whether the order of the High Court should be set aside. Among other considerations, which a court has to take into account in deciding whether bail should be granted in a non bailable offence. is the nature of the offence; and if the offence is of a kind in which bail should not be granted considering its seriousness, the court should refuse bail even though it has very wide powers under s.498 of the Code of Criminal Procedure. Now s.3 of the Act erects an offence which is prejudicial to the safety or interests of the State and relates to obtaining, collecting, recording or publishing or communicating to any other person any secret official code or pass-word or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly , useful to an enemy. Obviously the offence is of a very

serious kind affecting the safety or the interests of the State. Further where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine midfield, factory, dockyard, camp, ship or military or air force affairs of Government or in relation to any secret official code, it is punishable with fourteen years' imprisonment. The case against the respondent is in relation to the military affairs of the Government, and prima facie therefore, the respondent if convicted would be liable upto fourteen years'imprisonment. In these circumstances considering the nature of the offence, it seems to us that this is not a case where discretion , which undoubtedly vests in the court, under s.498 of the Code of Criminal Procedure, should have been exercised in favour of the respondent."

Thus, when the Court has considered wrongly the prima facie case and had granted bail on principles, namely,(i) that others are granted bail, (ii) that there was no likelihood of absconding, (ii) that trial was likely to take much time, this Court or the Supreme Court can cancel the bail.

Thus, the bail granted by the trial Court suffers from vice of arbitrariness and illegality to the extent of considering the defence . In this situation it is a fit case to exercise revisional powers to cancel the bail . Hence, for the reasons stated hereinabove,the application is liable to be allowed and is hereby allowed. The order passed by the learned Additional Sessions Judge on 26th June,1996 in Criminal Misc. Application no.572/96 is hereby set aside. Rule is made absolute. Any of the observations made in this application are for the purpose of this application only.

It is stated at the bar that the accused though were enlarged on bail by the order of the trial Court have not been enlarged as the stay of operation of that order stood extended upto 17th July,1996 and even thereafter they are not enlarged on bail as the hearing of the application proceeded with till date. It may be open for the accused to move the Court afresh for bail application if the charge is framed for offences other than one punishable with imprisonment for ten years or more.

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